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September 18, 2023

The Honorable Margo K. Brodie
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, Case No. 05-md-01720 (E.D.N.Y.) (MKB) (JO)

Dear Judge Brodie:

We are writing to inform the Court of an issue that is ripe now that the class settlement has become final and to request a pre-motion conference. Class counsel recently requested (and the Court approved) the transfer of funds to the Class Settlement Cash Escrow Account to, among other things, facilitate payment of attorneys' fees to class counsel.

My firm and my co-counsel asked class counsel to agree that they would not seek payment of the entirety of the fees that they had been awarded, until after the claims process began and a number of franchisee claims had been processed. Because the Court left open the possibility that it would entertain renewed motions for subclass counsel for the franchisees, we believe it is premature to submit a fee application for the work and time we have incurred to date, as subclass counsel may yet be appointed. Class counsel would not agree to do so.

Under Second Circuit law, objectors are "entitled to an allowance as compensation for attorneys' fees and expenses where a proper showing has been made that the settlement was improved as a result of their efforts." *White v. Auerbach*, 500 F.2d 822, 828 (2d Cir. 1974). These payments are to be made from the fees allocated to class counsel.¹

¹ If subclass counsel is not ultimately appointed, because we believe we have already improved the settlement, we intend to submit a motion seeking payment of fees incurred since we first brought the issue of the conflict between franchisors and franchisees to the attention of the parties and the Court.

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We would like the opportunity to discuss these issues in a pre-motion conference in advance of our filing any motion to enjoin class counsel from seeking payment of all attorneys' fees held in escrow until further Order from this Court.

Very truly yours,



Jana Eisinger